

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
---	---

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 11-01211 DMR	DATE FILED 3/11/11	U.S. DISTRICT COURT Oakland division, 1301 Clay Street, Suite 400S, Oakland, CA 94612
PLAINTIFF CLIP VENTURES		DEFENDANT IVYSKIN LLC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <u>D621,393</u>		
2		*SEE ATTACHED COMPLAINT
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
--------------------

CLERK  Richard W. Wicking	(BY) DEPUTY CLERK  Valerie Kyono	DATE  March 15, 2011
---------------------------------	--	----------------------------

ORIGINAL  
FILED COPY

2011 MAR 11 P 2:11

FORWARD TO THE  
CLERK OF THE COURT  
FOR FILING

1 **DAVID R. OWENS**, State Bar No. 180829

dowens@owenstarabichi.com

2 **BRUNO W. TARABICHI**, State Bar No. 21529

btarabichi@owenstarabichi.com

3 **OWENS TARABICHI LLP**

111 N. Market St., Suite 730

4 San Jose, California 95113

Telephone: 408.298.8200

5 Facsimile: 408.521.2203

BY FAX

6 Attorneys for Plaintiff

Clip Ventures LLC

E-filing

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

CV 11-1211 DMR

12 CLIP VENTURES LLC, a California  
limited liability company,

13 Plaintiff,

14 vs.

15 IVYSKIN LLC, a New Jersey limited  
liability company,

16 Defendant.

PLAINTIFF CLIP VENTURES LLC'S  
COMPLAINT FOR FALSE MARKING

19 Plaintiff Clip Ventures LLC ("Clip Ventures"), by its attorneys, Owens Tarabichi LLP, for  
20 its Complaint in this action alleges:

21 **PARTIES**

22 1. Clip Ventures is a California limited liability company having its principal place of  
23 business at 171 Main Street #139, Los Altos, California 94022.

24 2. IvySkin LLC ("IvySkin") is a New Jersey limited liability company having its  
25 principal place of business at 240 S. Main Street, S. Hackensack, New Jersey 07606.

26 **JURISDICTION AND VENUE**

27 3. This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331,  
28 1338(a), as this action involves substantial claims arising under the U.S. Patent Act of 1952, as

1 amended, 35 U.S.C. §§ 1 *et seq.*

2 4. This Court also has subject matter jurisdiction of this action under 28 U.S.C.  
3 § 1332 because the amount in controversy exceeds the sum or value of \$75,000, and there is  
4 complete diversity of citizenship between the parties.

5 5. IvySkin is subject to personal jurisdiction in this district because it conducts  
6 regular and systematic business in California, and the causes of action contained herein arise out  
7 of, or result from, IvySkin's purposeful availment of the privilege of conducting activities with or  
8 within the State of California.

9 6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c)  
10 because IvySkin is subject to personal jurisdiction in this district, IvySkin resides in this district,  
11 and a substantial part of the events or omissions giving rise to the claim(s) occurred in this  
12 district.

13 **INTRADISTRICT ASSIGNMENT**

14 7. Pursuant to N.D. Civil Local Rule 3-2(c), this is an intellectual property action  
15 subject to district-wide assignment.

16 **FACTS RELEVANT TO ALL CLAIMS**

17 8. The Patent Act of 1952 prohibits marking upon, affixing to, or using in advertising  
18 a patent number or the word "patented" in connection with an article that is unpatented. This  
19 includes advertising that a feature of an article is patented when that feature is unpatented.  
20 Pursuant to 35 U.S.C. § 292, a person or entity who falsely marks shall be fined up to \$500 on a  
21 per article basis.

22 9. The Patent Act also provides a *qui tam* cause of action for false marking. In  
23 bringing a *qui tam* cause of action for false marking, the plaintiff pays 50% of the fine to the U.S.  
24 Government and is permitted to retain the remaining 50% of the fine.

25 10. Accordingly, as a matter of public policy, the federal government has incentivized  
26 the consuming public, competitors, and others to identify falsely marked articles and bring a *qui*  
27 *tam* action. This is because falsely marking articles injures the public in several ways, including,  
28 but not limited to, (i) deterring innovation and stifling competition in the marketplace; (ii)

1 encouraging unnecessary investment in design around efforts; and (iii) inflating consumer  
2 demand for an article that the public believes is unique and without competition.

3 IvySkin's False Marking

4 11. IvySkin makes and sells a variety of accessories for handheld devices like the  
5 iPhone and iPad, such as cases and screen guards. IvySkin sells its products through its own  
6 website at [www.ivyskin.com](http://www.ivyskin.com), as well as through various retailers, including Amazon, Buy.com,  
7 Circuit City, and Target.

8 12. IvySkin sells several cases for the iPhone that include a Touch-Thru screen guard  
9 that protects the screen of the iPhone. These cases include at least the following products: (1) the  
10 Quattro4 Glass Screen Touch-Thru Case for iPhone 4 and (2) the SmartCase 4 for iPhone 4.

11 13. In advertising its Quattro4 Glass Screen Touch-Thru Case for iPhone 4 and  
12 SmartCase 4 for iPhone 4, IvySkin advertises that its Touch-Thru screen guard is patented and  
13 that its Xylo Glass is patented. Attached as Exhibit A are true and correct copies of IvySkin's  
14 online advertisements and press releases for these products in which IvySkin claims that the  
15 Touch-Thru screen guard and Xylo Glass are patented.

16 14. IvySkin, however, does not have a patent covering the Touch-Thru screen guard or  
17 Xylo Glass features of its Quattro4 Glass Screen Touch-Thru Case for iPhone 4 or SmartCase 4  
18 for iPhone 4. As such, IvySkin is engaging in false marking in violation of 35 U.S.C. § 293.

19 15. A search of the U.S. Patent and Trademark Office's records reveals that IvySkin  
20 owns only one U.S. patent, namely, U.S. Patent No. D621,393. IvySkin's U.S. Patent  
21 No. D621,393 is a design patent for a portion of a protective case, namely, a battery pack. U.S.  
22 Patent No. D621,393 does not cover the Touch-Thru screen guard or Xylo Glass features of its  
23 Quattro4 Glass Screen Touch-Thru Case for iPhone 4 or SmartCase 4 for iPhone 4.

24 16. IvySkin continues to sell its falsely marked Quattro4 Glass Screen Touch-Thru  
25 Case for iPhone 4 and SmartCase 4 for iPhone 4 to this day in California and, on information and  
26 belief, throughout the United States.

1 IvySkin's Intent to Deceive

2 17. Despite advertising that the Touch-Thru screen guard or Xylo Glass features of its  
3 Quattro4 Glass Screen Touch-Thru Case for iPhone 4 or SmartCase 4 for iPhone 4 are patented,  
4 IvySkin knew that these features were not patented and knowingly falsely marked these products  
5 with an intent to deceive the public and an intent to induce the public to believe that these features  
6 were covered by a U.S. patent when, in fact, these features are unpatented.

7 18. In fact, IvySkin's Founder and President, Michael Panahi, is a listed inventor on  
8 IvySkin's only U.S. patent, U.S. Patent No. D621,393. Accordingly, as an inventor, Mr. Panahi  
9 was fully aware that U.S. Patent No D621,393 did not cover the Touch-Thru screen guard or Xylo  
10 Glass features of its Quattro4 Glass Screen Touch-Thru Case for iPhone 4 or SmartCase 4 for  
11 iPhone 4.

12 19. Moreover, as IvySkin never obtained a U.S. patent covering the Touch-Thru  
13 screen guard or Xylo Glass features of its Quattro4 Glass Screen Touch-Thru Case for iPhone 4  
14 and SmartCase 4 for iPhone 4, it knew its advertising claims that such features are patented was  
15 false. As such, the only reason for IvySkin to claim that these features are patented when it  
16 knows they are not is to deceive the public and competitors into believing they are patented.

17 **FIRST CLAIM FOR RELIEF**  
18 **FALSE MARKING PURSUANT TO 35 U.S.C. § 292**

19 20. Paragraphs 1-19, above, are realleged and incorporated by reference as if set forth  
20 in full.

21 21. IvySkin sells the Quattro4 Glass Screen Touch-Thru Case for iPhone 4 and the  
22 SmartCase 4 for iPhone 4.

23 22. In advertising its Quattro4 Glass Screen Touch-Thru Case for iPhone 4 and  
24 SmartCase 4 for iPhone 4, IvySkin advertises that its Touch-Thru screen guard is patented and  
25 that its Xylo Glass is patented. However, these features are unpatented, as IvySkin does not own  
26 a patent covering these features.

27 23. IvySkin knew that the Touch-Thru screen guard and Xylo Glass features of its  
28 Quattro4 Glass Screen Touch-Thru Case for iPhone 4 and SmartCase 4 for iPhone 4 were

1 unpatented and knowingly falsely marked and advertised these features as patented with an intent  
2 to deceive the public and an intent to induce the public to believe that these features were  
3 patented.

4 24. IvySkin sells its falsely marked Quattro4 Glass Screen Touch-Thru Case for  
5 iPhone 4 and SmartCase 4 for iPhone 4 products to this day in California and, on information and  
6 belief, throughout the United States.

7 25. Pursuant to 35 U.S.C. §292, IvySkin should be penalized \$500 per falsely marked  
8 article.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Clip Ventures prays for judgment against IvySkin and relief as follows:

- 11 (i) that the Court declare, adjudge, and decree that IvySkin violated 35 U.S.C. § 292;  
12 (ii) that, pursuant to 35 U.S.C. § 292(b), the Court fine IvySkin in the amount of \$500  
13 for each falsely marked article, with half of the fine payable to Clip Ventures and the other half  
14 payable to the United States;  
15 (iii) that, pursuant to 35 U.S.C. § 285, Clip Ventures recover its reasonable attorneys'  
16 fees;  
17 (iv) that Clip Ventures recover the costs of this action, including attorneys' fees and  
18 interest; and  
19 (v) such other and further relief that this Court may deem just and equitable.

20  
21 Dated: March 10, 2011

Respectfully submitted,

OWENS TARABICHI LLP

22  
23  
24 By 

25 David R. Owens  
26 Bruno W. Tarabichi  
27 Attorneys for Plaintiff  
28 Clip Ventures LLC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


**RULE 7.1(a) STATEMENT**

Pursuant to Federal Rule of Civil Procedure 7.1(a), the undersigned counsel for Clip Ventures LLC hereby states that there is no parent corporation or publicly held corporation owning 10% or more of its stock.

Dated: March 10, 2011

Respectfully submitted,

OWENS TARABICHI LLP

By  \_\_\_\_\_  
David R. Owens  
Bruno W. Tarabichi  
Attorneys for Plaintiff  
Clip Ventures LLC